

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

CRL.A.No. 218 of 2003()

C.C.NO.64/2000 OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS-II, HARIPAD

APPELLANT: COMPLAINANT:

SARATH, S/O. SAHADEVAN,
LEKHA COTTAGE, PUTHUKUNDAM MURIYIL,
KARTHIKAPPALLY VILLAGE.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS: ACCUSED AND STATE:

1. N. NARAYANAN NAMBOOTHIRI,
THALIKKAL VELLIMANA THEKKUBHAGATHU,
MUTTAM P.O., PALLIPADU VILLAGE.

2. THE STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY ADV. SRI.JOHN BRITTO
PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.218 of 2003-A
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Dated this the 6th day of November, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.64/2000 with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. The case of the complainant is that the accused borrowed a sum of Rs.65,000/- from him on 01/12/1999 and towards the discharge of the same he issued the impugned cheque dated 01/01/2000 for Rs.65,000/- on the same day. The cheque when presented got dishonoured for want of funds in the account of the accused. The lawyer notice issued was not replied to nor was the amount repaid.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P9. Defence examined DW.1 and got marked Exts.D1 to D8.

4. The trial court acquitted the accused relying on the circumstances as brought out. PW.1 the complainant has testified as to the transaction. PW.2 the bank manager has deposed as to the dishonour of the cheque for want of funds in the account of the

accused. It is also brought out from the evidence of PW.2 the bank manager that Ext.P1 cheque leaf was issued from the bank to the accused on 30/07/1997 as a single cheque leaf. In view of the alleged borrowal and issuance of the cheque on 01/12/1999, the above is a strong circumstance that a person who had obtained a single cheque leaf on 30/07/1997 could not have kept it till 01/12/1999 and issued the cheque on the particular day, i.e about two years after receipt of the cheque leaf. It is the contention of the accused that he had borrowed certain amounts from one Madhavan Nampoothiri and issued a blank cheque to the above Madhavan Nampoothiri and the above cheque is being misused by the complainant. When PW.1 the complainant was examined Exts.D1 to D6 were confronted and proved through him. Ext.D3 dated 15/10/1999 is the lawyer notice issued by the complainant to the accused demanding payment of Rs.75,000/- borrowed on the basis of the promissory note and Ext.D4 is the reply notice issued by the accused dated 26/10/1999 denying any type of transaction with the complainant. The borrowal of Rs.65,000/- and the issuance of Ext.P1 cheque is allegedly on 01/12/1999. The fact that after Ext.D4 reply notice dated 26/10/1999, the complainant has given a loan of Rs.65,000/- to the accused on 01/12/1999 is in fact, that stands out against the complainant. It is unlikely that a person

who has denied the transaction of Rs.75,000/- vide notice dated 26/10/1999 would have managed to obtain Rs.65,000/- on 01/12/1999, i.e., about a month after Ext.D4 reply notice. Ext.D1 is a note in the piece of paper containing the printings of the business concern of the complainant, dated 01/07/1997, as per which he has informed that he is going to present the cheque and the amount should be remitted in the bank. Ext.D2 is a letter, dated 21/01/1998, in the letter head of Amply Autos, a business outfit of the complainant, stating that he is presenting the cheque for Rs.50,000/- and that the amount should be remitted in the bank. Further, the evidence of PW.1 is not at all consistent. He has even pleaded ignorance of Ext.D7 civil suit instituted with respect to the same transaction. I find that the evidence adduced by the complainant as PW.1 is unreliable. He could not establish that the accused borrowed a sum of Rs.65,000/- as alleged on 01/12/1999. The evidence of DW.1 is not at all helpful to decide the issues in the matter. In the circumstances, I find no reason to deviate from the findings of the court below. The criminal appeal is dismissed.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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J U D G M E N T

6th November, 2007